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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/449,021	11/24/1999	HELMUT EMMELMANN	EMME-1000US0	5718
8685 7590 11/22/2011 DERGOSITS & NOAH LLP Three Embarcadero Center Suite 410 SAN FRANCISCO, CA 94111			EXAMINER KENDALL, CHUCK O	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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Richard A. Nebb
Dergosits & Noah LLP
3 Embarcadero Center, Suite 410
San Francisco, CA 94111

MAILED

NOV 22 2011

In re Application of:
Helmut Emmelmann et al.
Application No. 09/449,021
Filed: November 24, 1999
For: INTERACTIVE SERVER
SIDE COMPONENTS

)
)
) Technology Center 2100
) **DECISION ON REQUEST TO**
) **RECONSIDER REINCLUSION OF**
) **CAIMS INTO APPEAL**
)
)

This is a decision on the petition filed September 13, 2011 under 37 C.F.R. § 1.182 for entry of claims filed on or after an appeal brief has been filed.

The petition is DENIED.

RELEVANT BACKGROUND

In rejection mailed January 21, 2010, all pending claims 1-6, 8, 22-33, 41-43, 51-96, and 114-128 are finally rejected under 35 USC 103 as being unpatentable over Web Writer: A Browsers-Based Editor for Constructing Web Applications Crespo et al. published in 1996 in view of Web Writer II, Crespo et al. published 1997.

In response to the Final Rejection, Petitioner filed a Notice of Appeal on February 12, 2010 and an Appeal Brief on May 12, 2010 traversing the rejection of all claims pending.

An Examiner's Answer was filed on October 13, 2010 in response to the Appeal Brief. In this answer, the Examiner maintained the rejection against claims 1, 22, 23, 26, 30, 32, 41, 42, 59-63, 67-69, and 71-73 but withdrew the rejection of claims 3-5, 24, 25, 27-29, 31, 43, 64-66 and 70.

In an Amendment after Final accompanying a Reply Brief filed December 13, 2010, Petitioner canceled claims objected to in the Examiner's Answer, claims 3-5, 24, 25, 27-29, 31, 43, 64-66 and 70. These claims were filed in a continuation filed December 13, 2010.

An Examiner's Answer mailed July 12, 2011, claims 1, 2, 22-23, 41 are rejected under 35 USC 103 as being unpatentable over "WebWriter II: Responsive Interaction for a Large Web

Application” in view of Faustini USPN 5,842,020 and claims 26, 30, 32, 33, 59-63, 67-69, and 71-73 under 35 USC 103 Web Writer”: A Browsers-Based Editor for Constructing Web Applications” in view of Faustini USPN 5,842,020.

On September 13, 2011, a Reply Brief along with this petition was filed. In the petition, a request was made to reinstate claims 3-5, 24, 25, 27-29, 31, 43, 64-66 and 70 in the appeal.

On October 11, 2011, Applicant submitted a summary of interview with the examiner. In this summary, Applicant alleges that a request was made to the Examiner for reinstatement of claims originally canceled from the instant application. Applicant also noted that agreement was reached language that would make claims allowable. However, a review of claims submitted in SN 12/966,976 reveals that not all claims were amended include the agreed upon language and claims which did not include such language was in fact rejected over prior art.

RELEVANT STATUTES

MPEP 1206 and 37 CFR 41.33 address amendments and affidavits or other evidence after appeal.

37 CFR 41.33

(a) Amendments filed after the date of filing an appeal pursuant to §41.31(a)(1) through (a)(3) and prior to the date a brief is filed pursuant to §41.37 may be admitted as provided in §1.116 of this title.

(b) Amendments filed on or after the date of filing a brief pursuant to §41.37 may be admitted:

(1) To cancel claims, where such cancellation does not affect the scope of any other pending claim in the proceeding, or

(2) To rewrite dependent claims into independent form.

(c) All other amendments filed after the date of filing an appeal pursuant to §41.31(a)(1) through (a)(3) will not be admitted except as permitted by §41.39(b)(1), 41.50(a)(2)(i), 41.50(b)(1) and 41.50(c).

(d) (1) An affidavit or other evidence filed after the date of filing an appeal pursuant to §41.31(a)(1) through (a)(3) and prior to the date of filing a brief pursuant to § 41.37 may be admitted if the examiner determines that the affidavit or other evidence overcomes all rejections under appeal and that a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented has been made.

(2) All other affidavits or other evidence filed after the date of filing an appeal pursuant to §41.31(a)(1) through (a)(3) will not be admitted except as permitted by §41.39(b)(1), 41.50(a)(2)(i) and 41.50(b)(1).

MPEP 1206 Amendments and Affidavits or Other Evidence Filed With or After

Amendments filed on or after the date of filing a brief pursuant to 37 CFR 41.37 may be

admitted only to:

- (A) cancel claims, where such cancellation does not affect the scope of any other pending claim in the proceeding; or
- (B) rewrite dependent claims into independent form.

Rewriting dependent claims into independent form as permitted under 37 CFR 41.33(b)(2) includes the following situations:

- (A) rewriting a dependent claim in independent form by adding thereto the limitations of the parent claim(s); and
- (B) rewriting an independent claim to incorporate therein all the subject matter of a dependent claim, canceling the dependent claim and in conjunction therewith changing the dependency of claims which had depended from the dependent claim being canceled to the amended independent claim that incorporates therein all the subject matter of the now canceled dependent claim.

DECISION

The request to reinstate claims accompanied the Reply Brief filed December 13, 2010. Thus, the request was filed after the brief was filed. In such circumstances, the authority of the examiner to enter amendments is limited to cancelation of claims or rewriting claims in independent form. Petitioners request to enter claims is neither a cancelation of claims nor a request to place pending dependent claims in independent form.

Thus, the examiner does not have the authority to enter requests made by Petitioner to reinstate claims 3-5, 24, 25, 27-29, 31, 43, 64-66 and 70 as part of the appeal.

For this reason, the request is **DENIED**.

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-3591.

/Gail O. Hayes/
Gail O. Hayes
Special Program Examiner/Quality Assurance Specialist
Technology Center 2100
Computer Architecture, Software, and
Information Security